

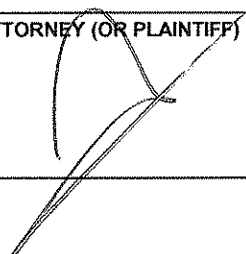
FORM B104 (08/07)

2007 USBC, Central District of California

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Page 2)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)		
<b>PLAINTIFFS</b> Lucy Gao, an individual	<b>DEFENDANTS</b> Atherton Financial Building, LLC, and Does 1-10 inclusive			
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) Jeffrey S. Shinbrot, APLC 8200 Wilshire Blvd., Suite 400 Beverly Hills, CA 90211	<b>ATTORNEYS</b> (If Known) Levene, Neale, Bender, Yoo & Brill, L.L.P. 10250 Constellation Blvd., # 1700 Los Angeles, CA 90067			
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee			
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR DECLARATORY JUDGMENT TO DETERMINE VALIDITY OF CLAIMS AND INTEREST AGAINST ESTATE PROPERTY				
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> <b>FRBP 7001(1) – Recovery of Money/Property</b>  <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property  <input type="checkbox"/> 12-Recovery of money/property - §547 preference  <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer  <input type="checkbox"/> 14-Recovery of money/property - other   <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b>  <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property   <b>FRBP 7001(3) – Approval of Sale of Property</b>  <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)   <b>FRBP 7001(4) – Objection/Revocation of Discharge</b>  <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)   <b>FRBP 7001(5) – Revocation of Confirmation</b>  <input type="checkbox"/> 51-Revocation of confirmation   <b>FRBP 7001(6) – Dischargeability</b>  <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims  <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud  <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny   <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> <b>FRBP 7001(6) – Dischargeability (continued)</b>  <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support  <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury  <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan  <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)  <input type="checkbox"/> 65-Dischargeability - other   <b>FRBP 7001(7) – Injunctive Relief</b>  <input type="checkbox"/> 71-Injunctive relief – imposition of stay  <input type="checkbox"/> 72-Injunctive relief – other   <b>FRBP 7001(8) Subordination of Claim or Interest</b>  <input type="checkbox"/> 81-Subordination of claim or interest   <b>FRBP 7001(9) Declaratory Judgment</b>  <input checked="" type="checkbox"/> 91-Declaratory judgment   <b>FRBP 7001(10) Determination of Removed Action</b>  <input type="checkbox"/> 01-Determination of removed claim or cause   <b>Other</b>  <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i>  <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)                         </td> </tr> </table>			<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  <div style="text-align: center;">(continued next column)</div>	<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input checked="" type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23		
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$		
Other Relief Sought				

FORM B104 (08/07), page 2

2007 USBC, Central District of California

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR Atherton Financial Building, LLC		BANKRUPTCY CASE NO. 2:14-bk-27223	
DISTRICT IN WHICH CASE IS PENDING Central District	DIVISIONAL OFFICE Los Angeles		NAME OF JUDGE Thomas B. Donovan
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE		NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			
DATE 1/16/14		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Jeffrey S. Shinbrot, Esquire	

### INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not presented by an attorney, the plaintiff must sign.

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  Jeffrey S. Shinbrot, Esquire (155486) JEFFREY S. SHINBROT, APLC 8200 Wilshire Blvd., Suite 400 Beverly Hills, CA 90211 (310)659-5444 (310)878-8304 Fax jeffrey@shinbrotfirm.com  <i>Attorney for Plaintiff</i>	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION</b>	
In re: ATHERTON FINANCIAL BUILDING, LLC	CASE NO.: 2:14-bk-27223-TD  CHAPTER: 11
Debtor(s).	ADVERSARY NUMBER:
LUCY GAO, an individual          Plaintiff(s)  Versus ATHERTON FINANCIAL BUILDING, LLC, and Does 1-10 inclusive.    Defendant(s)	<b>SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]</b>

TO THE DEFENDANT: A Complaint has been filed by the Plaintiff against you. If you wish to defend against the Complaint, you must file with the court a written pleading in response to the Complaint. You must also serve a copy of your written response on the party shown in the upper left-hand corner of this page. The deadline to file and serve a written response is \_\_\_\_\_. If you do not timely file and serve the response, the court may enter a judgment by default against you for the relief demanded in the Complaint.

A status conference in the adversary proceeding commenced by the Complaint has been set for:

<b>Hearing Date:</b> _____	<b>Place:</b>
<b>Time:</b> _____	<input type="checkbox"/> 255 East Temple Street, Los Angeles, CA 90012
<b>Courtroom:</b> _____	<input type="checkbox"/> 3420 Twelfth Street, Riverside, CA 92501
	<input type="checkbox"/> 411 West Fourth Street, Santa Ana, CA 92701
	<input type="checkbox"/> 1415 State Street, Santa Barbara, CA 93101
	<input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills, CA 91367

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

**You must comply with LBR 7016-1, which requires you to file a joint status report and to appear at a status conference.** All parties must read and comply with the rule, even if you are representing yourself. You must cooperate with the other parties in the case and file a joint status report with the court and serve it on the appropriate parties at least 14 days before a status conference. A court-approved joint status report form is available on the court's website (LBR form F 7016-1.STATUS.REPORT) with an attachment for additional parties if necessary (LBR form F 7016-1.STATUS.REPORT.ATTACH). If the other parties do not cooperate in filing a joint status report, you still must file with the court a unilateral status report and the accompanying required declaration instead of a joint status report 7 days before the status conference. **The court may fine you or impose other sanctions if you do not file a status report. The court may also fine you or impose other sanctions if you fail to appear at a status conference.**

**KATHLEEN J. CAMPBELL  
CLERK OF COURT**

Date of Issuance of Summons and Notice of Status Conference in Adversary Proceeding: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy Clerk

JEFFREY S. SHINBROT, ESQ. (SBN 155486)  
jeffrey@shinbrotfirm.com  
JEFFREY S. SHINBROT, APLC  
8200 Wilshire Boulevard, Suite 400  
Beverly Hills, California 90211  
Telephone: (310) 659-5444  
Fax: (310) 878-8304

Attorneys for Plaintiff  
Lucy Gao

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

ATHERTON FINANCIAL  
BUILDING, LLC

Chapter 11 Debtor,

LUCY GAO,

Plaintiff,

Adv.

ATHERTON FINANCIAL  
BUILDING, LLC, and Does 1 – 10,  
inclusive.

Defendant(s).

Bankruptcy Case No:2:14-bk-27223-TD

Chapter 11

Adversary Case Number: \_\_\_\_\_

**COMPLAINT FOR:**

- 1. DECLARATORY JUDGMENT TO DETERMINE INTERESTS AGAINST ESTATE PROPERTY;**
- 2. FOR INTERPLEADER OF ESTATE FUNDS; AND**
- 3. FOR INJUNCTIVE RELIEF**

Status Conference

Date: TBD

Time:

Place:

**COMES NOW**, Plaintiff Lucy Gao and alleges as follows:

**Jurisdictional Allegations**

1. This adversary proceeding relates to and arises under the Chapter 11 case of Atherton Financial Building, LLC (the “Debtor” or “Defendant”), 2:14-27223-TD (the “Chapter 11 Case”), currently pending before this Court. The Chapter 11 Case was

1 commenced on September 9, 2014, (the "Petition Date"). This Court has subject matter  
2 jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §157(a) and (b) and 28  
3 U.S.C. § 1334(b). This matter is a core proceeding within the meaning of 28U.S.C. §  
4 157(b)(2)(A), (E) and (O), as applicable. Venue is proper in Central the District of  
5 California pursuant to 28 U.S.C. § 1408. The Plaintiff seeks and are entitled to declaratory  
6 and other relief pursuant to 28 U.S.C. §§ 2201(a) and 2202, and in the alternative or in  
7 conjunction therewith, 11 U.S.C. 105.

### 8 **Factual Allegations**

9 2. The Defendant commenced its bankruptcy case by filing a voluntary petition  
10 under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on  
11 September 9, 2014 (the "Petition Date").

12 3. On September 23, 2014, the Debtor filed its Statement of Financial Affairs  
13 in its bankruptcy case [at docket number 13 in the Chapter 11 Case], incorrectly indicating  
14 that the membership interest of the Debtor are owned by American REO Solutions, LLC  
15 (in the amount of 20%); Great Vista Real Estate Invest Corp. (in the amount of 40%);  
16 Sunshine Valley LLC (in the amount of 20%); and Washington Capital Management,  
17 LLC in the amount of 20%. The Statement of Financial Affairs was executed by  
18 Benjamin Kirk.

19 4. The true sole owner of the membership interests of the Debtor is Lucy Gao,  
20 an individual ("Plaintiff").

21 5. On the Petition Date, the Debtor's primary asset was a commercial building  
22 located at 1906 El Camino Real, Menlo Park, CA 94027 (the "Property"). Upon motion  
23 of the Debtor, on December 4, 2014, the Bankruptcy Court entered its Order approving  
24 the sale of the Property (the "Sale Order"); which sale resulted in funds in excess of  
25 certain amounts owed to undisputed creditors in the approximate amount of \$3.5 million  
(the "Estate Funds").

26 6. Pursuant to the Sale Order, the Estate Funds are currently held in the  
27 attorney-client trust account of Levene, Neale, Bender, Yoo & Brill, L.L.P. ("LNBYB").  
28

1           7.     On December 24, 2014, the Debtor filed a Motion For Order (1)  
2 Authorizing Disbursement of Funds to Creditors and (2) Dismissal of Bankruptcy Case  
3 pay creditors the Bankruptcy Case and dismiss the Chapter 11 case. Plaintiff objected to  
4 the motion based on her information and belief that the Estate Funds would be transferred  
5 to a bank account that, while nominally held by the Debtor, was solely controlled by Mr.  
6 Kirk, the same person who executed incorrect bankruptcy statements in the Bankruptcy  
7 Case. The motion was continued by the Bankruptcy Court until January 21, 2015 and the  
8 Estate Funds currently remain in the trust account of LNBYB.

9           8.     LNBYB has informed Ms. Gao that they intend to transfer the Estate Funds  
10 to a debtor-in-possession account controlled solely by Mr. Kirk, Mr. Kirk has informed  
11 Ms. Gao that he intends to immediately transfer the Estate Funds to a person named  
12 “Sophia” and that “Sophia” has an interest in the Estate Funds.

13           9.     Based on the forgoing, at least the Debtor, “Sophia,” Ms. Gao assert an  
14 interest in the Estate Funds. The Plaintiff is unaware of the true name of the persons or  
15 entities that may have an interest in the Estate Funds and therefore reserves the right to  
16 substitute the true name in for “Doe” when the identity is learned.

17  
18                           **First Cause of Action**

19                           [For Declaratory Judgment Adjudicating the Disposition of Estate Funds]

20           10.     Plaintiff incorporates by this reference, as though fully set forth herein, each  
21 and every preceding paragraph alleged in this Complaint.

22           11.     LNBYB seeks to transfer Estate Funds to a bank account controlled solely  
23 by Benjamin Kirk, the same person who has executed inaccurate bankruptcy schedules  
24 and statements and who has indicated his intent to immediately transfer the funds to a  
25 person allegedly named “Sophia.”

26           12.     Plaintiff therefore requests that the Court adjudicate and declare that Mr.  
27 Kirk and “Sophia” have no interest in the Estate Funds, that the Estate Funds must be  
28 transferred to an account owned or controlled by Ms. Zao and that the Estate Funds may

1 not be transferred from the LNBYB attorney-client trust account absent the express  
2 consent of Ms. Zao.

3 **Second Cause of Action**

4 [For Interpleader of the Estate Funds]

5 13. Plaintiff incorporates by this reference, as though fully set forth herein, each  
6 and every preceding paragraph alleged in this Complaint.

7 14. LNBYB has informed Ms. Gao that they intend to transfer the Estate Funds  
8 to a debtor-in-possession account controlled solely by Mr. Kirk, Mr. Kirk has informed  
9 Ms. Gao that he intends to immediately transfer the Estate Funds to a person named  
10 "Sophia" and that "Sophia" somehow has a claim to such money.

11 15. In order to ensure that the Estate Funds are given to those that are properly  
12 entitled to it and to ensure that Plaintiff is protected from further liability, interpleader of  
13 the Estate Funds is necessary and appropriate.

14 **Third Cause of Action**

15 [For Injunctive Relief]

16 16. Plaintiff incorporates by this reference, as though fully set forth herein, each  
17 and every preceding paragraph alleged in this Complaint.

18 17. LNBYB has stated its intentions to transfer the Estate Funds to an account  
19 nominally owned by Debtor, but actually controlled by Mr. Kirk, who misrepresented the  
20 true equity structure of the Debtor in its bankruptcy schedules and who has stated his  
21 intent to immediately transfer the Estate Funds to a third party named "Sophia."

22 18. If an injunction does not issue restraining and enjoining the transfer of estate  
23 funds from the attorney-client trust account of LNBYB, Plaintiff will be irreparably  
24 harmed as a result of complete control of the Estate Funds passing to an account  
25 controlled solely by Mr. Kirk who has indicated his intent to transfer such funds.

26 WHEREFORE, Plaintiff Lucy Gao prays for judgment as follows:

- 27 1. An Order adjudicating that Mr. Kirk and "Sophia" have no interest in the  
28 Estate Funds, that the Estate Funds must be transferred to an account



1 owned or controlled by Ms. Zao and that the Estate Funds may not be  
2 transferred from the LNBYB attorney-client trust account absent the  
3 express consent of Ms. Zao.

4 2. For Interpleader of the Estate Funds.

5 3. For an issuance of a temporary restraining order, preliminary and  
6 permanent injunction enjoining the transfer of Estate Funds from the  
7 LNBYB attorney-client trust account to a debtor-in-possession account  
8 controlled by Mr. Kirk..

9  
10 Dated: January 20, 2015

JEFFREY S. SHINBROT, APLC

11  
12  
13 By:

14 JEFFREY S. SHINBROT, ESQ.  
15 Counsel for Plaintiff  
16  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature